

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION**

MOUSSA DIARRA,

Petitioner,

v.

DEKALB COUNTY JAIL,

Respondent.

:
:
:
:
:
:
:
:
:
:
:

NO. 4:21-cv-113-CDL-MSH

ORDER

Petitioner Moussa Diarra, a pretrial detainee in the Dekalb County Jail in Decatur, Georgia, has filed a Petition for Writ of Habeas Corpus using the standard form required for 28 U.S.C. § 2254 actions. ECF No. 1. He, however, has not been convicted and appears to contest his March 9, 2021 arrest and current pretrial confinement. *Id.* at 1-5, 7-8. His action, therefore, should be brought under 28 U.S.C. § 2241, not 28 U.S.C. § 2254.

Petitioner also filed a motion to proceed *in forma pauperis*. ECF No. 4. For purposes of his dismissal, this motion is **GRANTED**.

A petition filed pursuant to 28 U.S.C. § 2241 must be filed in the district of confinement. *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004) (“Whenever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should . . . file the petition in the district of confinement.”); *Fernandez v. United States*, 941 F.2d 1488, 1495 (11th Cir. 1991) (“Section 2241 petitions may be brought only in the district court for the district in which the inmate is incarcerated.”); *see also* 28 U.S.C. §

2241(a).

The Court could dismiss the petition without prejudice. *See Pruitt*, 417 F. App'x 903, 904 (11th Cir. 2011); *Fleming v. U.S. Dep't of Homeland Sec.*, No. 1:13-cv-1364-TWT, 2013 WL 2446303 at *1 (N.D. Ga. 2013) (dismissing § 2241 action for lack of jurisdiction because petitioner was detained in the Southern District of Georgia, not the Northern District). However, 28 U.S.C. § 1631 provides that

whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other . . . court . . . in which the action . . . could have been brought at the time it was filed.

See Dobard v. Johnson, 749 F.2d 1503, 1506 (11th Cir. 1985) (stating that if the Northern District of Alabama decided that it lacked jurisdiction over the § 2241, it could have transferred the case to the Southern District of Alabama under § 1631).

The Court determines that it is not “in the interest of justice” to transfer this action to the Northern District of Georgia because Petitioner already has a 28 U.S.C. § 2241 petition pending in that Court: *Diarra v. Maddox*, 1:21-cv-2205-WMR-LTW (N.D. Ga. May 26, 2021). 28 U.S.C. § 1631. In that action, Petitioner complains about his “unlawful arrest on March 9, 2021” and subsequent incarceration. ECF No. 1 at 2, 6 in *Diarra v. Maddox*, 1:21-cv-2205-WMR-LTW (N.D. Ga. May 26, 2021). Petitioner can raise any claim he has regarding his arrest and pretrial confinement in the § 2241 petition that is already pending in the Northern District of Georgia.

Accordingly, this action is **DISMISSED** without prejudice.¹

SO ORDERED, this 8th day of July, 2021.

S/Clay D. Land

CLAY D. LAND
U.S. DISTRICT COURT JUDGE
MIDDLE DISTRICT OF GEORGIA

¹ Petitioner's motion for appointment of counsel is **DENIED** as moot. ECF No. 3